



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable P. W. Minter  
County Attorney  
Jim Hogg County  
Hebbronville, Texas

Dear Sir:

Opinion No. 0-3732

Re: Where a defendant is convicted on a complaint in a justice court and is serving his fine and costs in jail, may he be tried on insanity charges issued by the justice court when he becomes insane?

Your request for our opinion on the hereinabove captioned question has been received. We quote from your request as follows:

"As per telephone conversation today where defendant convicted on complaint in justice court is serving fine and cost in jail and becomes insane may he be tried on insanity issued by Justice Court under title Twelve, C. C. P."

Article 921, Title 12, of Vernon's Annotated Code of Criminal Procedure provides as follows:

"If at any time after conviction and by the manner and method as hereinafter provided, it be made known to the Judge of the Court in which the indictment has been returned, that the defendant has become insane, since his conviction, a jury shall be empaneled as in ordinary criminal cases to try the question of insanity."

An indictment must be presented or returned by the grand jury to the district court and not to the county court or an inferior tribunal. Article 393, V. A. C. C. P.; 23 Tex. Jur. p. 594.

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The jurisdiction, power and authority of justices of the peace are such as are fixed by the Constitution and statutes. Article 5, Section 19, of the Texas Constitution provides in part as follows:

"Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, . . . ."

A similar provision is found in Article 60 of Vernon's Annotated Code of Criminal Procedure. As stated in the opinion in the case of Ginnocchio vs. State, 18 S. W. 82, the words used in the Constitution which convey jurisdiction upon the justices of the peace "are clear, strong and entirely unambiguous."

It appears to be well settled in felony cases in Texas that, under Article 921, the District Court in which a defendant was convicted has exclusive jurisdiction to try the issue of insanity after conviction. Ex parte Millikin, 299 S. W. 433; Ex parte Davenport, 7 S. W. (2d) 589; Escue vs. State, 227 S. W. 483; Bland vs. State, 132 S. W. (2d) 274.

We have been unable to find any Texas case which either holds or discusses the effect of Article 921 in a case where the defendant becomes insane after a conviction in the justice court.

We are of the opinion that in using the words "judge of the court in which the indictment has been returned," in Article 921, the Legislature intended to limit the application of said Article to convictions in the district court. Nowhere in either our Constitution or statutes is there any authority or jurisdiction conferred on a justice court to determine the issue of sanity vel non or to conduct lunacy proceedings. If the Legislature had intended to confer such important new powers upon justice courts under the provisions of Article 921, it is only reasonable to assume that such intention would have been expressed in clear and unambiguous terms.

Article 34 of Vernon's Annotated Penal Code provides, among other things, that:

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"No person who becomes insane after he is found guilty shall be punished while in such condition."

As we understand the facts submitted to us in your telephone conversation and confirmed by your telegraphic request for our opinion, the defendant is now serving out in jail his fine and costs assessed on his conviction in justice court. You further state that you are informed on reliable authority that the defendant is now insane. It follows, therefore, that he is entitled to his statutory rights which entitle him to immunity from further punishment while he is in such an unfortunate condition.

While we are of the opinion that Article 921 is not applicable, for the reasons hereinabove mentioned, we feel that the issue of his insanity vel non may be determined under the provisions of Title 92 of Vernon's Annotated Civil Statutes relating to the regular judicial proceeding in cases of lunacy. While lunacy proceedings may only be instituted against any person "not charged with a criminal offense" (Article 5561a, V. A. C. S.), we are of the opinion that a defendant is "charged" with a crime only until the charges against him have been judicially determined by either an acquittal or a final conviction. Inasmuch as the defendant, under the facts submitted by you, has been convicted and the judgment of conviction has become final, we are of the opinion that he is no longer "charged with a criminal offense" within the meaning of that term as used in Article 5561a. He is consequently subject to the lunacy proceedings as provided in Title 92.

You are respectfully advised that it is the opinion of this department, under the facts stated, that the issue of insanity may not be tried by the justice court in which the defendant was convicted and that said issue may only be determined by the county judge in the manner provided for in Title 92 of Vernon's Annotated Civil Statutes.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Edgar Pfeil*  
Edgar Pfeil  
Assistant

APPROVED JUL 7, 1941  
*George C. Miller*  
FIRST ASSISTANT  
ATTORNEY GENERAL

EP:ej

